

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PETER NICHOLAS DESIO,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17 C 508
)	
COMED COMPANY a/k/a)	
COMMONWEALTH EDISON COMPANY,)	
)	
Defendant.)	

MEMORANDUM ORDER

This action by Peter Desio ("Desio") against ComEd Company a/k/a Commonwealth Edison Company ("ComEd"), assertedly brought under the federal Telephone Consumer Protection Act ("Act")¹ and the Illinois Consumer Fraud and Deceptive Business Practices Act, has been assigned to this Court's calendar under this District Court's computerized random assignment system. This memorandum order is issued sua sponte to require Desio's counsel to address a question posed by the Complaint.

As Complaint ¶ 27 alleges, Act § 227(a)(1) defines an "automatic telephone dialing system" in these terms:

[E]quipment which has the capacity --

- (a) to store or produce telephone numbers to be called, using a random or sequential number generator; and
- (b) to dial such numbers.

That definition makes clear the type of telephone use on which Congress, in enacting the Act, focused as an abuse.

¹ Citations to the Act, part of Title 47 of the United States Code, will take the form "Act § --," omitting the prefatory "47 U.S.C."

That however is not the type of conduct that gave rise to Desio's Complaint, which asserts a grievance stemming from his having been targeted directly by multiple calls placed on an individualized basis because of his asserted nonpayment of a ComEd bill. This Court should not be misunderstood as expressing any view as to the viability or nonviability of Desio's substantive claim -- instead his counsel is ordered on or before February 10, 2017 to provide this Court with the citation of a case or cases that hold telephone usage of the type charged in the Complaint to be violations of the Act.² This Court can then promptly determine the future course of this action.



Milton I. Shadur
Senior United States District Judge

Date: January 27, 2017

² To the extent that any such citation is unpublished but is available on Westlaw, counsel's submission should include a photocopy of the Westlaw opinion.